

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability
company,) CASE NO. 3:17-cv-05760-BHS
)
Plaintiff,) **AGREED ORDER**
)
vs.)
)
KEVIN SYKES-BONNETT and SYKED)
ECU TUNING INCORPORATED, a)
Washington corporation, and JOHN)
MARTINSON,)

Defendants.

THIS MATTER coming to be heard on Plaintiff HP TUNERS, LLC's ("HPT" or "Plaintiff") Renewed Emergency Motion for Temporary Restraining Order and Preliminary Injunction pursuant to Federal Rules of Civil Procedure 65(b) and Plaintiff HP TUNERS, LLC's Motion to Compel, for Sanctions and to Modify Scheduling Order against Defendants KEVIN SYKES-BONNETT, SYKED ECU TUNING INCORPORATED and JOHN MARTINSON (collectively "Defendants") and Defendants' Emergency Motion for Temporary Restraining Order against Plaintiff, due notice having been given, the motion having been fully briefed and argued in open court and the Court being fully advised in the premises;

Initially, the Court states that in connection with the Plaintiff's Renewed Emergency Motion for Temporary Restraining Order, the Court ordered Defendants to return to Plaintiff: (i)

1 all originals and copies of the “Flash Drive” provided to Defendants by Ken Cannata; and (ii) all
2 originals and copies of HPT’s programs, software, electronic file folders or files in possession of
3 Defendants. Subsequent to the hearing, Defendants have informed Plaintiff and represent to this
4 Court that, prior to the date of this Order, Defendants have destroyed and Defendants no longer
5 possess: (i) any originals and copies of the “Flash Drive” provided to Defendants by Ken
6 Cannata (the “Flash Drive”); or (ii) any originals and copies of HPT’s programs, software,
7 electronic file folders or files.

8
9 NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

10 1. Plaintiff’s Emergency Motion for Temporary Restraining Order is granted in part
11 as set forth herein and denied in part without prejudice for the reasons set forth on the record.

12 2. Defendants, as well as each of their agents, and all persons acting in concert with
13 any of them, are hereby immediately restrained from, directly or indirectly, using, accessing,
14 distributing, disseminating, transferring, copying or otherwise referencing HPT’s key generator
15 program and tool;

16 3. Defendants, as well as each of their agents, and all persons acting in concert with
17 any of them, are hereby immediately restrained from, directly or indirectly, using, accessing,
18 distributing, disseminating, transferring, copying or otherwise referencing any HPT programs,
19 software, electronic file folders, files or information obtained or received from Ken Cannata or
20 any third party;

21 4. Defendants, as well as each of their agents, and all persons acting in concert with
22 any of them, shall immediately return to HPT any and all originals and copies of the Flash Drive,
23 the HPT key generator program and tool and all HPT programs, software, electronic file folders
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1 or files in their possession, custody or control if such continues to exist in any form or manner
2 whatsoever;

3 5. Defendants, as well as each of their agents, and all persons acting in concert with
4 any of them, shall immediately return to HPT any and all HPT interfaces in their possession,
5 custody or control and, prior to returning said interfaces being returned to HPT, Defendants shall
6 not take any action to modify, manipulate, damage or the interfaces being returned to HPT;

7 6. Defendants, as well as each of their agents, and all persons acting in concert with
8 any of them, shall immediately return HPT's E38 Harness to HPT in working order which was
9 provided to Defendants by Ken Cannata;

10 7. Defendants, as well as each of their agents, and all persons acting in concert with
11 any of them, are immediately restrained from, directly or indirectly, publicly releasing HPT's
12 programs, software, electronic file folders, files or information in any manner whatsoever;

13 8. Defendants, as well as each of their agents, and all persons acting in concert with
14 any of them, are immediately restrained from, directly or indirectly, providing HPT's programs,
15 software, electronic file folders, files or information to any third party in any manner whatsoever;

16 9. Within five (5) business days of the entry of this Order, each of the Defendants,
17 Kevin Sykes-Bonnett, Syked ECU Tuning, Inc. and John Martinson, shall provide a Declaration,
18 under penalties of perjury under 28 U.S.C. § 1746, to HPT which:
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20 a. specifically details any and all programs, software, electronic file
21 folders, files or information of HPT that was provided to each particular
22 Defendant by Ken Cannata or any other third party; and

23 b. specifically details the time, place, location and particulars of the
24 destruction of (i) all originals and copies of the Flash Drive and/or (ii) all originals
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1 and copies of HPT's programs, software, electronic file folders or files that were
2 in the possession, custody or control of Defendants including but not limited to
3 detailed information concerning the specifics of what was destroyed and the
4 identity of any witnesses to said destruction and also including when, how and
5 where all of said materials and information were destroyed; and

6 c. certifies that: (i) all originals and copies of the Flash Drive and (ii)
7 all originals and copies of HPT's programs, software, electronic file folders or
8 files in possession, custody and/or control of Defendants have been destroyed
9 and/or returned to HPT, and if Defendant cannot certify to the foregoing,
10 Defendant shall provide specific details and particulars concerning (i) any
11 originals or copies of the "Flash Drive" and/or (ii) any originals and copies of
12 HPT's programs, software, electronic file folders or files which have not been
13 destroyed and/or returned; and

14 d. certifies that Defendant is not in possession, custody or control of
15 (i) any originals or copies of the "Flash Drive" or (ii) any originals and copies of
16 HPT's programs, software, electronic file folders or files, and if Defendant cannot
17 certify to the foregoing, Defendant shall provide specific details and particulars
18 concerning Defendant's possession, custody or control of (i) any originals or
19 copies of the "Flash Drive" and/or (ii) any originals and copies of HPT's
20 programs, software, electronic file folders or files; and

21 e. certifies that Defendant is not aware of the location or whereabouts
22 of (i) any originals or copies of the "Flash Drive" or (ii) any originals and copies
23 of HPT's programs, software, electronic file folders or files, and if Defendant
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1 cannot certify to the foregoing, Defendant shall provide specific details and
2 particulars concerning the location or whereabouts of (i) any originals or copies of
3 the “Flash Drive” and/or (ii) any originals and copies of HPT’s programs,
4 software, electronic file folders or files; and

5 f. certifies that Defendant did not provide (i) originals or copies of
6 the “Flash Drive” or (ii) originals and copies of HPT’s programs, software,
7 electronic file folders or files to any third party at any time, and if Defendant
8 cannot certify to the foregoing, Defendant shall provide specific details and
9 particulars concerning the manner in which Defendant provided (i) originals or
10 copies of the “Flash Drive” and/or (ii) originals and copies of HPT’s programs,
11 software, electronic file folders or files to any third party including the name,
12 address and contact information (e.g. last known address, phone number and
13 email address) of all such third parties; and

14 g. certifies that Defendant did not share, disseminate, convey,
15 provide, transfer or give access to: (i) any originals or copies of the “Flash Drive”
16 and/or (ii) any originals and copies of HPT’s programs, software, electronic file
17 folders or files to any third party at any time, and if Defendant cannot certify to
18 the foregoing, Defendant shall provide specific details and particulars concerning
19 the manner in which Defendant shared, disseminated, conveyed, provided,
20 transferred or gave access to any originals or copies of the “Flash Drive” and/or
21 any originals or copies of HPT’s programs, software, electronic file folders or
22 files to any third party including the name, address and contact information (e.g.
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1 last known address, phone number and email address) of all such third parties;
2 and

3 h. certifies that Defendant did not copy, transfer, save, load,
4 download and/or store (i) any originals or copies of the “Flash Drive” or (ii) any
5 originals and copies of HPT’s programs, software, electronic file folders or files
6 onto any computer, device, hard drive and/or storage device at any time, and if
7 Defendant cannot certify to the foregoing, Defendant shall provide specific details
8 and particulars concerning the computer, device, hard drive and/or storage device
9 on which (i) any originals or copies of the “Flash Drive” or (ii) any originals and
10 copies of HPT’s programs, software, electronic file folders or files were copied,
11 transferred, saved, loaded, downloaded and/or stored.
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13 10. Defendants’ Emergency Motion for Temporary Restraining Order is denied for
14 the reasons stated on the record.
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1 11. HPT's Motion to Compel, for Sanctions and to Modify the Scheduling Order is
2 granted in part and denied in part as set forth fully herein.¹

3 12. Defendants are ordered to fully and completely respond to Plaintiff's requests for
4 production of documents and to produce any and all responsive documents in their possession,
5 custody or control within seven (7) days.

6 13. Defendants are ordered to supplement all of their responses to discovery requests,
7 to state that no responsive documents exist, if it so contends, and to state in detail and under oath,
8 the steps it undertook to search for responsive documents within seven (7) days.

9 14. Defendants are ordered to provide supplemental answers to interrogatories 4, 5
10 and 7 of the First Set of Interrogatories and interrogatories 4 and 5 of the Second Set of
11 Interrogatories within seven (7) days.

12 15. The Scheduling Order dated December 26, 2017 is hereby vacated.

13 16. The new Scheduling Order shall be as follows:
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16 ¹ NOTE RE: MOTION TO COMPEL: At hearing on the Renewed Emergency Motion for
17 Temporary Restraining Order, based on the Court's comments and general instructions and
18 directions on the issue of discovery throughout the course of the hearing, Plaintiff understood the
19 Court's ruling on the Motion to Compel to be that Plaintiff's Motion to Compel was granted and
20 Defendants were ordered to produce the documents and information which were sought in
21 connection with Plaintiff's motion to compel. In connection with the preparation of this Order
22 on this issue, Defendants have advised that they disagree with Plaintiffs' understanding
23 concerning the Court's order and believe that the Court only granted the Motion in connection
24 with the request to modify the scheduling order and that the Court did not compel production of
25 additional documents and information or order sanctions. To the extent that this Court did not
grant Plaintiff's motion to compel and did not order Defendants to produce the requested
documents and information which have been requested and which remain outstanding, Plaintiff
requests that the motion to compel be heard vis-à-vis these issues (and the issue of sanctions
given Defendants' concealment and non-disclosure of relevant and material information) on a
telephonic hearing to be scheduled for a date subsequent to the entry of this order and for this
order to reflect that the Motion to Compel, for Sanctions and to Modify the Scheduling be
granted in part as it relates to the Scheduling Order and that the balance of the Motion is
continued for further telephonic hearing.

- a. *FIVE DAY* Jury Trial is set for 4/29/2019 at 9:00 AM in Courtroom E before Judge Benjamin H. Settle.
- b. Expert Witness Disclosure/Reports under FRCP 26(a)(2) due by 12/23/2018,
- c. Rebuttal Expert Disclosure/Reports due by 1/23/2019,
- d. Discovery Motions due by 12/14/2018,
- e. Discovery completed by 1/14/2019,
- f. Dispositive motions due by 2/14/2019,
- g. Motions in Limine due by 3/30/2018,
- h. Pretrial Order due by 4/8/2019,
- i. Voir dire/jury instructions/trial briefs due by 4/16/2019,
- j. Agreed Neutral Statement of the Case due by 4/15/2019,
- k. Deposition Designations due by 4/15/2019, and
- l. Pretrial Conference set for 4/15/2019 at 11:00 A.M

ENTER:

JUDGE

DATE

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